IN THE HIGH COURT OF JUDICATURE
FOR RAJASTHAN AT JAIPUR

S.B. Civil Writ Petition No.6402/97

Lachchi Ram & Ors. Vs. Board of Revenue & Anr.

Date of Order :: 13th March, 2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri S.C. Gupta for petitioner.

Shri R.P. Garg for respondent.

REPORTABLE

The petitioner Lachchi Ram, who is now being represented by his legal representatives, has filed this writ petition challenging the judgment of the Board of Revenue dated 5.6.1997 whereby the revision petition u/s. 84 of the Rajasthan Land Revenue Act, 1956 (in short `the Act') filed by him against the order dated 20.3.91 passed by the

Additional Divisional Commissioner was dismissed thereby upholding order of the Additional Collector Tonk dated 31.3.87 setting aside mutation in favour of the petitioner. He has further challenged the order dated 29.2.97 by which his petition seeking review of the aforesaid judgment dated 5.7.97 was dismissed by the learned Board of Revenue.

Dispute pertains to a piece of land bearing Khasra No.1992 measuring 7 bighas and 13 biswas situated in Village Chauru in Tehsil Uniyara of District Tonk. This land was entered in the name of petitioner Lachchi Ram on the basis of his long possession since Svt. 2015 (equivalent to the year 1957-58). Mutation of the land was accordingly made in his name. The respondent Modya and

Badri challenged the said mutation no.35 before the learned Additional Collector, Tonk who by his order dated 31.3.87 held that since the petitioner Lachchi Ram was a person belonging to Dhangar community, which is a scheduled caste, the land in dispute which was entered in his favour by Gram Panchayat on the basis of transaction of sale by the respondents to the petitioner was not legal because such transaction was barred by Section 42 of the Rajasthan Tenancy Act and therefore was void. Moreover, the transfer of the land could have been made only by a registered sale deed, in the absence of which, it cannot be accepted that the land had actually been sold out by the respondents to the petitioner. The learned Additional Collector accordingly

set aside the mutation no.35. The petitioner filed appeal thereagainst before the Additional Divisional Commissioner, Ajmer on the premise that when the respondents sold the land to him on 2.8.58 against sale consideration, they had also put him in possession and ever since the petitioner was in possession of the land in dispute. It was now not open to them to contend that sale deed shall be executed at a later point of time. The respondents for the first time filed the appeal before the Additional Collector as late as in 1984 with the delay of 26 years. No one can even bring a suit to challenge the sale after expiry of 12 years. The learned Additional Divisional Commissioner however did not accept any of these

arguments and dismissed the appeal thus upholding the order passed by the Additional Collector. The revision petition filed by the petitioner was also dismissed by the Board of Revenue and thereafter the review petition was also rejected as aforesaid.

I have heard Shri S.C. Gupta, the learned counsel for the petitioner and Shri R.P. Garg learned counsel for the respondents.

Shri S.C. Gupta, the learned counsel for the petitioner argued that the mutation entered in favour of the petitioner Lachchi Ram could not have been set aside by the Courts below because the appeal thereagainst was for the first time filed after expiry of 26 years on 1.8.84 and that no explanation

whatsoever was given as to why the appeal was not filed in time. The appeal was also filed before the incompetent authority namely S.D.O., Tonk. The petitioner remained in possession of the land in dispute right since 2.8.58 and has thus acquired title by adverse possession. He has a right to protect his possession on the basis of agreement of sale executed by the original khatedar of the land in favour of Ram Chandra who was father of petitioner Lachchi Ram. The petitioner has remained in peaceful possession of the land in dispute for last 20 years and he has been cultivating the same ever since he acquired its possession. The mutation entries have been made in favour of the petitioner on the basis of the factum of his possession

which is duly verified by the revenue authorities. The mutation was made as far back as 11.7.58 after thorough verification and in the presence of both the parties including the respondents. The mutation records contained signatures of the petitioner Lachchi Ram as well as the respondents. The respondents as per there own saying are not presently residing in village Chauru and they have been living in other village for a quite long time. Settlement department has also issued a “purcha lagan” in favour of Lachchi Ram on 29.9.88 and thereafter again on 26.11.88. While khasra girdawari for Svt. 2013, 2014 & 2015 are in name of respondents and from Svt. 2016 to 2019 they are in the name of petitioner Lachchi Ram. In between, the respondents

stopped the practice of maintaining the khasra girdawari but when it was resumed again, the name of the petitioner Lachchi Ram was again mentioned therein during Svt. 2028 to 2031 and thereafter from 2051 to 2054. Mere non registration of the agreement to sale does not affect the right of the petitioner particularly when execution of the agreement to sale was accompanied with delivery of possession of the land to the petitioner.

Shri S.C. Gupta, the learned counsel for the petitioner relied on the judgment in the case of Suman Verma Vs. Union of India & Ors., AIR 2004 SC page 4800 in which it was held that mutation entry does not confer right to title of the property. He further referred to another judgment of Hon’ble Supreme Court in

Bondar Singh & Ors. Vs. Nihal Singh & Ors. reported in AIR 2003 SC 1905 in which it was held that although unregistered sale deed was not admissible but it can be looked into for collateral purposes such as to see nature of possession of the party over suit property while deciding the question of title on the basis of adverse possession. He also relied on the division bench judgment of this Court in Anandi Lal Vs. State of Rajasthan & Ors., WLC 1996 (2) 36 wherein it was held that even in the absence of specific period of limitation for making reference, the authority on whom the power has been conferred cannot exercise such power after an inordinate delay. He also referred to the division bench judgment of this Court in State of

Raj. Vs. Teja & Ors., 2005 (2) WLC 53 in which case the respondents acquired khatedari right on the strength of transfer which was contrary to section 42 supra, the court held that the rights of the respondents who were in possession of the land for number of years could not be questioned after enormous delay in absence of any positive case of fraud or collusion. Shri S.C. Gupta has also relied on the judgment of Hon'ble Supreme Court in the case of Mahila Bajrangi (Dead) Through Lrs. Vs. Badribai W/o Jagannath & Anr., (2003) 2 SCC 464. He therefore prayed that the petition be allowed and the impugned orders be set aside and mutation in favour of petitioner be restored.

On the other hand, Shri R.P. Garg,

the learned counsel for the respondents while contesting the writ petition argued that the amendment in Section 42 of the Rajasthan Tenancy Act which bars the transfer of land of the candidates of S.C. and S.T. to General Category itself came into force on 1.5.1964 whereas the transfer in question had already been effected much earlier on 2.8.58. As regards the delay of 26 years, he argued that there was in fact no delay because the period of limitation should be taken to have commenced from the date of knowledge and the respondents came to know about mutation only in last settlement in the year 1984 in which the land in dispute was entered in favour of the petitioner. He contested the claim of the petitioner about possession and

argued that respondents are still in possession of the land in dispute. According to Shri R.P. Garg, the learned counsel for the respondents, mutation proceedings before the revenue authorities are merely in the nature of fiscal entries and not in the nature of judicial proceedings and therefore they do not confer any title. He placed reliance on the decision of division bench of this Court in Khuman Mal Vs. Bhairu reported in 1994 (1) RBJ 50 in which it was held that for claiming khatedari rights by adverse possession against private persons, the period of limitation is 12 years but against the State, it is 30 years and even if a declaration is given that trespasser has acquired khatedari rights after expiry of

12 years the State is still free to institute case u/s. 175 of the Rajasthan Tenancy Act to dispossess the trespasser. Shri R.P. Garg also relied on the Division Bench judgment of this Court in Laxman & Ors. Vs. Board of Revenue, Ajmer & Ors. WLC (Raj.) 1999 (1) page 33 in which case reference made to the Board of Revenue by the Additional Collector after delay of 18 years was accepted by the Board. The Division Bench held that this being a matter where collusive decree was obtained in regard to illegal transfer of land belonging to the persons of Schedule Caste and therefore such transfer was made in violation of the provisions of Section 42 of the Rajasthan Tenancy Act. The judgment passed in reference and by the learned Single Judge were upheld and

the earlier division bench's decision in Anandi Lal (supra) was distinguished.

I have given my thoughtful consideration to the arguments advanced by learned counsel for the parties and perused the material on record.

Examination of the records reveals that the respondents approached the Additional District Collector by filing appeal against the mutation no.35 with regard to khasra no.1992 of the land measuring 7 bighas and 13 biswas on 13.8.1984 with a case that the aforesaid land was of their joint khatedari which they inherited from their ancestors on the death of their father Bajrang Lal. They have been regularly paying the land revenue and were in possession of the same since Svt 2015. They came to know

after last settlement in 1984 that Lachchi Ram had got mutation of the land entered in his name sometime around 1960 on the basis of alleged sale of the same in his favour by Modiya and Badri (respondents herein) for consideration of a sum of Rs.1,025/-. It was denied that they ever sold this land to the petitioner. It was stated that no agreement or sale deed was ever executed by the respondents in favour of petitioner. There was no such sale deed which was ever registered. No notice was given to them by the concerned authorities prior to entering the name of the petitioner in the mutation and cancelling that of the respondents.

The learned Additional Collector by his order dated 31.3.1987 held that till

the sale was effected by registered sale deed, of which there was no proof on record, it cannot be accepted that the respondents sold the land to the petitioner and without any proof of the sale, mutation could not have been entered in the name of the petitioner herein. The Additional Divisional Commissioner upheld the order of the Additional Collector, Tonk. Although one of the grounds that was raised before the Additional Collector was that the sale in question, even otherwise, was prohibited because land of Schedule Caste person could not be transferred to a General category person as the same was barred by Section 42 of the Rajasthan Tenancy Act. The Additional Collector in his order in substance cancelled the mutation because

the same was entered in favour of the petitioner without their being any proof of the sale by the registered sale deed or otherwise, and without any notice to the respondent. He however did not give any finding on the question of sale being barred by Section 42 of the Rajasthan Tenancy Act and that the respondents herein were the members of the Schedule Caste community whereas the land owned by Schedule Caste cannot be sold to a general category person which the petitioners are. Similarly, the Additional Commissioner, Ajmer also has although noted the argument of respondents but he also did not give any finding on this aspect. When the matter was taken to the Board of Revenue by the petitioners, the Board of Revenue also

confined its judgment only on this aspect of the matter that there was no proof of the fact that sale was made by the registered sale deed and unless this was proved to the satisfaction of the competent authority, the mutation could not be entered in favour of the petitioners. The Board also observed that if this was accepted, anybody would get the land of someone else entered in his name and that too without serving any notice to the owner. The Board also noted that the question of limitation would lose its importance once it was shown that the khatedar could come to know about the impugned mutation entered in favour of the petitioner at a very late stage and it would be a valid reason for late filing of the appeal.

The argument of the learned counsel for the petitioners is that mutation entries are merely fiscal entries and such entries were made only on the basis of possession of the petitioners over the land in dispute and, therefore, the proof of title of property is not required to be seen for that purpose. But this argument does not render the findings recorded by the three courts below illegal because no proof of the fact that the petitioner was in possession of the land in dispute in his own right was brought before them. A perusal of the oder passed by the Additional Collector would reveal that the respondents asserted before him that they were in possession of the land in dispute and were making payment of the land revenue

regularly and had given the land to the respondents on the basis of the sharing of the crop and Badri who was brother of the respondent no.2 and one of the appellants before Asstt. Collector, used to collect the share every year. The question of possession would therefore loose significance and accordingly no fault can be found with the conclusion arrived at by the learned Additional Collector that mutation of the land owned by the respondents could be entered in the name of the petitioner only if any proof of the sale of the same in favour of the petitioner by registered sale deed was proved on record. The Additional Collector also noted that mutation was entered by the Gram Panchayat in favour of the petitioner without any notice to

the respondents. The Board of Revenue has also made a similar discussion about the illegality committed by the Gram Panchayat in entering the name of the petitioner in the mutation. In these facts, the other part of the argument raised before the courts below that the transfer of the land of Schedule Caste person in favour of the General Category was barred by virtue of Section 42 of the Rajasthan Tenancy Act need not be considered because the Courts below have omitted to give any finding on the same. The argument of the learned counsel for the respondent that the restriction contained in Section 42 having been brought in force by virtue of amendment with effect from 1st May, 1964 and therefore would not be attracted to a

mutation entered prior to issuance of such notification sometime in the year 1960, would really be of no consequence because the orders passed by the authorities below can be sustained for other reasons independent of the violation or otherwise of Section 42 of the Rajasthan Tenancy Act.

So far as the judgments of Hon'ble Supreme Court relied on by learned counsel for the petitioner in Suman Verma (supra) and Mahila Bajrangi (supra) are concerned, they merely laid down that mutation proceedings before the revenue authorities are not judicial proceedings because such entries are merely fiscal in nature and do not confer any right or title to the property. There cannot be any quarrel about this proposition of

law. But on the facts of the present case however these judgments do not help the petitioner because even otherwise he has been not able to prove as to on what basis he gets the title and the argument of the learned counsel for the petitioner, if taken to its logical conclusion, it would be evident that not only the petitioner failed to prove the transfer of the land in dispute by any registered sale deed, the mutation entries also does not confer any title upon him. The judgment of Hon'ble Supreme Court in Bondar Singh (supra) also does not help the petitioners because in that case the plaintiff in a civil suit claimed the title of the suit land by adverse possession, but in the present case the petitioner has not adopted any

such course by filing civil suit and even otherwise no such adverse possession has been proved by way of any evidence for the simple reason that the petitioner did not chose to establish his title on the basis of adverse possession which was very necessary in the face of the assertion by the respondents that he was their licensees, the land having been given to him for cultivation on the basis of sharing of crop. The petitioner therefore cannot perfect his title merely on the basis of mutation entries. As regards the division bench judgment of this Court in State of Raj. Vs. Teja & Ors. (supra), it was a case where the issue was with regard to reference made after enormous delay and on that basis cancellation of khatedari rights which

the khatedar concerned acquired in violation of Section 42 of the Rajasthan Tenancy Act. Present one is neither a case of reference nor the orders of the Court below are solely based on violation of the Section 42 of the Rajasthan Tenancy Act, nor is it a case where khatedari rights were conferred on the petitioner.

Adverting now to argument raised by learned counsel for the petitioner that even if no period of limitation is prescribed, yet the invocation of power by the concerned authorities after inordinate delay cannot be justified, the learned counsel sought to support this argument on the basis of division bench judgments in Teja & Ors. and Anandi Lal (supra). There can be no two views on the

correctness of the proposition of law because it has been rightly held in those judgments that even if any specific period of limitation has not been prescribed for making reference by the authorities to the Board of Revenue either under Section 82 of the Land Revenue Act or Section 232 of the Rajasthan Tenancy Act, yet such power is required to be exercised within a reasonable time and invocation of power after inordinate delay and unreasonable length of time was bad in law. But those observations were given in the context of the reference made by the District Collectors after inordinate delay. The present one is however a case where the respondents have come out with a plea that the land in dispute was given to the

petitioner by them as their licensee to cultivate the same on the basis of the sharing of the crop and the facts with regard to entering the name of the respondent in mutation came to their notice immediately after settlement of the 1984, which is why they filed the appeal late on the basis of such knowledge. Scope and nature of reference proceedings is entirely different than that of an appeal or a regular civil or revenue suit. While in a reference the power is not allowed to be exercised after enormous delay owing to inaction on the part of the functionaries of the State to timely initiate the proceeding for that would result in unsettling the rights of the affected party due to long lapse of time. But in the case of an

appeal, reasons owing to which the affected party was prevented from filing the appeal within the prescribed period of limitation shall have to be examined by applying the litmus test of sufficient cause. When the first appellate Court has entertained the appeal of the respondents on merits accepting the explanation for the delay that they came to know about the impugned mutation entry only after the settlement of the year 1984 and particularly when that Court and all subsequent courts have consecutively decided the matter on merits in favour of the respondents. Even otherwise, a legitimate claim cannot be allowed to be defeated on the anvil of delay alone. Besides, cancellation of the mutation entries made in favour of the petitioner

would have no other effect except restoring earlier mutation in favour of the respondents. This would not in law bestow any fresh title on the respondent just as it could not confer any title in favour of the petitioner if such entries were retained. I therefore, do not find any merit in the arguments raised by learned counsel for the petitioners.

I do not find any of the judgments passed by the Courts below suffer from any legal error, much less any error apparent on the face of the record requiring interference by this Court in exercise of its supervisory jurisdiction under article 227 of the Constitution of India.

In view of what has been discussed above, this writ petition fails and is

hereby dismissed. In the facts of the case, I leave the parties to bear their own costs.

(Mohammad Rafiq),J.

RS/-